IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 33896 of 2006(I)

I.A.2452/06 IN OS.513/2004DT. 20.7.06 of PRL.M.C.KOZHIKODE-I

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PETITIONER:

PRASAD, AGED 44 YEARS, S/O. DAMODARAN,
MADHURAKANDIYIL, VENGERI VILLAGE,
VEGNERI, KOZHIKODE.

BY ADV. SRI.JESWIN P.VARGHESE

RESPONDENT:

BASULAMITHRAN,
AGED 38 YEARS, S/O. VELAYUDHAN,
PARAYERIKUNNUMMEL, VEGNERI, KOZHIKODE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.33896 OF 2006

DATED THIS THE 20th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the plaintiff in O.S.513/04 on the file of Principal Munsiff Court, Kozhikode. Petitioner filed the suit seeking a declaration of right of easement of necessity through plaint 'B' schedule pathway which belongs to respondent. An order of temporary injunction was sought for. But finding that petitioner has no prima facie case, learned Munsiff dismissed the application. Petitioner admittedly challenged that order in an appeal. That was also dismissed. Petitioner thereafter filed an application for permission to pass through plaint 'B' schedule pathway twice in a month. That was also dismissed. Thereafter I.A.2452/06 was filed for permission to pass through plaint 'B' schedule pathway to collect usufructs from the property. Under Ext.P2 order, it was dismissed. This petition is filed under Article 227 of Constitution of India challenging Ext.P2 order.

2. Learned Counsel appearing for petitioner vehemently argued that learned Munsiff should have allowed petitioner to pass through plaint 'B' schedule pathway at least for a few hours once in a month. When learned Munsiff has already found that petitioner has no prima facie case, it is not proper to interfere with Ext.P2 order in

exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India. It is more so when petitioner did not produce the copy of the plaint, the petition or the order passed earlier or even the report submitted by the Commissioner.

Petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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